IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.11694 of 1998
DATED 11-7-2007

BETWEEN
K.Shankara Rao

.. Petitioner

And
The Presiding Officer,
Labour Court, Guntur and another.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.11694 of 1998

ORDER:

Aggrieved by the award of the Labour Court, Guntur, in I.D.No.148 of 1993 dated 25.7.1995, the present writ petition is filed by the petitioner-workman only to the limited extent that he was denied back wages.

The petitioner was appointed as a driver on 11.4.1976. It is his case that, while he was working at Kavali, he became sick and underwent treatment at the Kavali Government Hospital from 6.1.1989 to 11.1.1989, that when he reported for duty on 12.1.1989, and submitted his fitness certificate covering the period from 6.1.1989 to 11.1.1989, he was permitted to join duty, that he worked

till February, 1989 and that again he reported sick for 15 days in March 1989 and another 15 days in April. He also fell sick in May 1989 and applied for 15 days leave. Thereafter, he was issued charge memo for his unauthorized absence from 12.1.1989 to 28.2.1989. An enquiry was conducted and the Enquiry Officer submitted a report. After having issued a show cause notice and recording the petitioner's explanation thereto, he was removed from service. Aggrieved thereby, he approached the Labour Court, Guntur.

Before the Labour Court, respondents contended that the petitioner had applied for leave from 5.1.1989 to 11.1.1989 initially on the ground that he was suffering from back ache and thereafter he remained absent from duty from 12.1.1989 without intimation. It is stated that the Corporation did not pay any salary for January 1989 and that a charge memo was issued to the petitioner which was sent by registered post acknowledgment due on 23.2.1989 but was returned unserved with the endorsement that 'the party was not available'. It is stated that the petitioner reported for duty on 5.6.1989 with the medical certificate issued by the private medical practitioner for his absence from 12.1.1989 to 4.3.1989. Respondents contended that, if indeed the petitioner suffered illness, he ought to have reported before the Medical Officer at Kavali so as to be referred to the Hospital at Tarnaka for expert treatment and that, instead the petitioner had simply left head quarters without obtaining permission of his superiors and had failed to intimate his whereabouts which was in violation of the rules. Respondents contended that the petitioner was absent for nearly 70 days during 1987 and 282 days from 17.2.1987 to 11.6.1989.

The Labour Court took note of the fact that the petitioner's absence from duty was abnormal, that while the petitioner had contended that he had fallen sick and could not attend duty, the respondents had denied the same. The Labour Court also noted that, though the counsel for the claimant workman had filed a memo for adjudication of the preliminary issue regarding validity of the domestic enquiry, he had later endorsed on 2.2.1996 that he was not pressing for any such preliminary hearing. Therefore, the matter was heard under Section 11-A of the Industrial Disputes Act, 1947 (for short 'the Act').

The Labour Court observed that the findings arrived at by the Enquiry Officer in his report were correct. However, relying on a decision of this Court in **P.Ramesh Babu v. APSRTC**[1], the Labour Court observed that the petitioner's absence from duty was supported by a medical certificate produced by him from a private medical practitioner at Ongole with whom he took treatment and in view of the fact that the absence of the petitioner from duty was due to sickness it must be held that the punishment of removal from service was not warranted and that a lesser punishment could have been given to the claimant. It is in such circumstances that the Labour Court had directed reinstatement of the petitioner into service but without back wages.

The Labour Court has held that the findings of the Enquiry Officer were valid and correct. As such the finding that the petitioner was unauthorisedly absent, as recorded by the Enquiry Officer, must be held to have been affirmed by the Labour Court.

On the quantum of punishment, while taking note of the fact that the petitioner was unauthorisedly absent for a period of 70 days, the Labour Court held that the punishment of removal from service was disproportionate and that ends of justice would be met if the petitioner was to be reinstated with continuity of service but without back wages. In this context, it is necessary to note that while the petitioner was removed from service by an order dated 28.6.1990, he had approached the Industrial Tribunal three years thereafter. It is well settled that the Labour Courts/Industrial Tribunals have jurisdiction under Section 11-A of the Act not only to re-appreciate the evidence on record but also to examine the proportionality of the punishment imposed. In the present case the Labour Court on re-appreciation of the evidence on record has confirmed the finding of guilt recorded against the petitioner by the Enquiry Officer and the disciplinary authority. It is only on the quantum of punishment that the labour Court, while holding that the punishment was disproportionate, had modified the punishment to one of reinstatement with continuity of service but without back wages. Denial of back wages in the present case is as a measure of punishment. This Court, in its certiorari jurisdiction, would not sit in appeal over the exercise of discretion by the Labour Court under Section 11-A of the Act unless such exercise of discretion is found to be so capricious or arbitrary so as to be in violation of Articles 14 and 16 of the Constitution of India. It is also well settled that, while interfering with the punishment imposed on a delinquent employee, the Labour Court cannot be swayed by considerations of sympathy and must exercise its jurisdiction only when it finds that the punishment imposed is shockingly disproportionate.

In the instant case it is not in dispute that the petitioner was unauthorisedly absent from duty for 70 days. It cannot therefore be said that the punishment, substituted by the Labour Court to that of denial of back wages for such unauthorized absence from duty, is so shockingly disproportionate as to necessitate interference by this Court in exercise of its Certiorari jurisdiction under Article 226 of the Constitution of India.

The writ petition fails and is accordingly dismissed.

RAMESH RANGANATHAN,J

Dt: 11.7.2007
msv.

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[1] 1984 Lab.I.C.